

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT to  
GENERAL CONDITIONS OF THE CONTRACT  
FOR CONSTRUCTION  
AIA A201-1997**

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**ARTICLE 2 OWNER**

- 2.2.1 Delete the entire paragraph.

**ARTICLE 4 ADMINISTRATION OF THE CONTRACT****4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

- 4.2.1 Revise the first sentence of the paragraph to read: "...and will be the Owner's representative during construction and the one-year period for correction of Work described in Paragraph 12.2."

**4.4 RESOLUTION OF DISPUTES AND CLAIMS**

- 4.4.1 In the second sentence of the paragraph, delete the word "arbitration."
- 4.4.5 In the last sentence, delete the words "and arbitration."
- 4.4.6 Delete the entire paragraph.
- 4.4.8 Revise the paragraph to read: "If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, or by mediation."

**4.5 MEDIATION**

- 4.5.1 Delete the words "arbitration or."
- 4.5.2 Revise the paragraph to read: "The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the Mediation Center of Kentucky, 271 West Short Street, Lexington, Kentucky, or any other non-profit mediation council approved by the Kentucky Department of Education, Division of Facilities Management. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order."

**4.6 ARBITRATION**

Delete Article 4.6 in its entirety.

**ARTICLE 7 CHANGES IN THE WORK**

- 7.1.4 Add subparagraph 7.1.4, as follows: "Any proposed Change in the Work exceeding \$5,000, additive or deductive, shall be subject to approval by the Division of Facilities Management, Kentucky Department of Education, prior to execution of the Change Order by the Owner."
- 7.2.2 Add the following after the words "Subparagraph 7.3.3: ", except in case of Change Orders increasing the Contract Sum, excluding Change Orders determined solely by unit prices, the

reasonable allowance for overhead and profit shall not exceed fifteen percent (15%) of the net cost of the change."

## **ARTICLE 8 TIME**

8.3.1 Delete the words: "and arbitration."

## **ARTICLE 9 PAYMENTS AND COMPLETION**

9.3.1 Change "retainage if provided for in the Contract Documents" to "retainage as stipulated in Subparagraph 9.3.4."

9.3.4 Add Subparagraph 9.3.4 as follows: "The Owner shall retain ten percent (10%) from each Application for Payment up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner may approve a reduction in retainage to five percent (5%) of the current Contract Sum. No part of the five percent (5%) retainage shall be paid until the Division of Facilities Management, Kentucky Department of Education, has made a final on site review of completed instructional space and has provided written approval for final payment or further reduction in retainage. If reasons for reduction of the retainage are certified in writing by the Architect and approved by the Owner, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Division when deemed reasonable. The minimum lump sum amount shall be twice the estimated cost to correct deficient or incomplete work."

### **9.10 FINAL COMPLETION AND FINAL PAYMENT**

9.10.1 Add the following sentence to the end of the paragraph: "Upon receipt of the final Certificate for Payment, the Owner will complete his portion of the "Final Approval and Payment Application" (BG-4, May 1993) and forward it to the Kentucky Department of Education, Division of Facilities Management, with the Architect's notification that all items of the punch list have been completed. When these two documents of certification have been filed with the Kentucky Department of Education, the Chief State School Officer will give written final approval to the project and authorize the Owner to make final payment."

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

11.1.2 Add the following: "Such insurance shall be no less than the following amounts:

(1) Public Liability	\$200,000.00 one person/maximum each person \$500,000.00 one accident/maximum each person
(2) Property Damage	\$200,000.00 one accident/maximum \$500,000.00 aggregate"

11.1.2.1 The Insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

(1) Worker's Compensation:

a. State	Statutory
b. Applicable Federal (e.g. Longshoreman's)	Statutory
c. Employer's Liability	\$100,000

(2) Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protection; Product Liability and Completed Operations; Broad Form Property Damage);

- a. General Aggregate  
(Except Products-Completed Operations) \$1,000,000
- b. Products-Completed Operations Aggregate \$1,000,000
- c. Personal/Advertising Injury  
(per person/organization) \$1,000,000
- d. Each Occurrence  
(Bodily Injury and Property Damage) \$1,000,000
- e. Limit per Person Medical Expense \$ 5,000
- f. Exclusions of Property in Contractors Care,  
Custody or Control will be eliminated.
- g. Property Damage Liability Insurance will provide  
Coverage for Explosion, Collapse,  
and Underground Damage.

(3) Contractual Liability:

- a. General Aggregate \$1,000,000
- b. Each Occurrence  
(Bodily Injury and Property Damage) \$1,000,000

(4) Automobile Liability:

- a. Bodily Injury \$500,000 Each Person  
\$1,000,000 Each Accident
- 2. Property Damage \$500,000 Each Accident, or a  
combined single limit of  
\$1,000,000.

(5) Liability coverage for the Owner, the Architect, the Architect's Consultants and others listed in the Supplementary Conditions will be provided (subject to customary exclusions for professional liability), by endorsement as additional insureds on the Contractor's Liability Policy.

(6) Excess Liability Umbrella Form:

- a. General Aggregate \$1,000,000
- b. Each Occurrence \$1,000,000

The owner shall be consulted with to determine if additional coverage limits are required to comply with their specific needs as dictated by their legal counsel and/or insurance carrier.

## 11.4 PROPERTY INSURANCE

- 11.4.1 Revise the first sentence of Subparagraph 11.4.1 as follows: Delete "Unless otherwise provided, the Owner" and substitute therefor "The Contractor". Revise "the jurisdiction" to "the Commonwealth of Kentucky". Add the following sentences: "The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto."
- 11.4.1.2 Delete clause 11.4.1.2.
- 11.4.1.3 Delete clause 11.4.1.3.
- 11.4.4 Delete Subparagraph 11.4.4.
- 11.4.6 Delete Subparagraph 11.4.6 and substitute therefor the following: "Before an exposure to loss may occur, the Contractor shall file with the Owner two certified copies of the policy or policies providing this Property Insurance coverage, each containing those endorsements specifically related to the

Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Contractor."

- 11.4.7 Modify Subparagraph 11.4.7 by substituting "Contractor" for "Owner" at the end of the first sentence.
- 11.4.8 Modify Subparagraph 11.4.8 by substituting "Contractor" for "Owner" as fiduciary; except that at the first reference to "Owner" in the first sentence, the word "this" shall be substituted for "Owner's".
- 11.4.9 Modify Subparagraph 11.4.9 by substituting "Contractor" for "Owner" each time the latter word appears.
- 11.4.10 Modify Subparagraph 11.4.10 by substituting "Contractor" for "Owner" each time the latter word appears.

## **11.5 PERFORMANCE BOND AND PAYMENT BOND**

- 11.5.1 Delete Subparagraph 11.5.1 and substitute the following: "Unless otherwise provided, when the Contract Sum exceeds twenty-five thousand dollars (\$25,000) the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be executed by a surety company authorized to do business in Kentucky, and the cost thereof shall be included in the Contract Sum. Unless otherwise provided, the amount of each bond shall be equal to 100% of the Contract Sum."

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.6 INTEREST**

Delete this paragraph in its entirety.

### **13.8 CONFLICT OF INTEREST**

- 13.8.1 Add the Following: "Conflict of Interest: Gratuities and Kickbacks: Use of Confidential Information (KRS 45A.455)
  - (1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
    - a. He, or any member of his immediate family has a financial interest therein; or
    - b. A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
    - c. Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
  - (2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specifications or purchase standard, rendering of advice, investigations, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

- (3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
- (5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person."

**END OF AMENDMENT**

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